

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DEREK FOLLEY,	:	
	:	
Petitioner,	:	
	:	Case No. 3:22-cv-65
v.	:	
	:	District Judge Thomas M. Rose
KEITH J. FOLEY, Warden,	:	
	:	Magistrate Judge Michael R. Merz
Respondent.	:	

**ENTRY AND ORDER OVERRULING OBJECTION (DOC. NO. 62);
ACCEPTING AND ADOPTING REPORT AND RECOMMENDATION (DOC.
NO. 52); DENYING, WITHOUT PREJUDICE, PETITIONER’S “MOTION FOR
SUMMARY JUDGMENT IN PURSUANT TO SNOW VIOLATION – DOUBLE
JEOPARDY VIOLATION” (DOC. NO. 49); AND DENYING, WITHOUT
PREJUDICE, PETITIONER’S “MOTION FOR SUMMARY JUDGMENT IN
PURSUANT TO SPEEDY TRIAL VIOLATION” (DOC. NO. 51)**

This 28 U.S.C. § 2254 *habeas corpus* case is before the Court on what is titled the “Second Amendment to Objection to Magistrate Judge Michael R. Merz- Report and Recommendations- In Pursuant to : Petitioner’s Motions for Summary Judgment 49 51 Should be Denied” (the “Objection”) (Doc. No. 62) filed by Petitioner Derek Folley (“Folley”), which the Court construes as written objections to the March 23, 2022 Report and Recommendation (“Report”) (Doc. No. 52). In the Report, Magistrate Judge Michael R. Merz recommended that the Court deny, without prejudice to their renewal after the record is complete, the two motions for summary judgment filed by Folley, i.e., Doc. No. 49 and Doc. No. 51. (Doc. No. 52.) Judge Merz explained that, although the Court ordered the Respondent to answer the Petition, the answer and the State Court Record are not due to be filed until May 9, 2022. (*Id.*)

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a *de novo* review of the record in this case. Upon said review, the Court finds that Folley's Objection to the Report is not well taken, and it is **OVERRULED**. *See Manfredi v. United States*, No. Civ. 12-1905 (RMB), 2012 WL 2884006, at *1 (D.N.J. July 13, 2012) (denying, without prejudice, petitioner's motion for summary judgment as premature where respondent had not yet filed an answer to the *habeas* petition and the court did not have the relevant record necessary to determine the merits of petitioner's claim for *habeas* relief); *Zamgola v. Campbell*, No. C 05-0975 JF (PR), 2006 WL 2263906, at * 1 (N.D. Cal. Aug. 8, 2006) (denying, without prejudice, petitioner's motion for summary judgment as premature where court had yet to review the merits of the petition for a writ of *habeas corpus*); *c.f. Serv., Hosp., Nursing Home & Pub. Emps. Union, Loc. No. 47, Affiliated with Serv. Emps. Int'l Union, AFL-CIO v. Com. Prop. Servs., Inc.*, 755 F.2d 499, 507 (6th Cir. 1985) (affirming denial of motion for partial summary judgment as premature). The Court **ACCEPTS** and **ADOPTS** the Report (Doc. No. 52) in its entirety and rules as follows:

1. The Court **DENIES**, without prejudice to refiling, the "Motion for Summary Judgment in Pursuant to Snow Violation – Double Jeopardy Violation" (Doc. No. 49); and,
2. The Court **DENIES**, without prejudice to refiling, the "Motion for Summary Judgment In Pursuant to Speedy Trial Violation" (Doc. No. 51).

DONE and **ORDERED** in Dayton, Ohio, this Monday, April 4, 2022.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE